IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No.4824 of 2001 (S/S)

Shankar Dutt Joshi ……. Petitioner.

Versus

State ……..... Respondents.

Date of decision: 29 October, 2004

For the approval of:

Hon'ble Justice P,C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4824 of 2001 (S/S)

Shankar Datt Joshi …….. Petitioner

Versus

State of Uttaranchal,
Through Secretary,
Department of Social Welfare,
Uttaranchal Government,
Dehradun and others. ……. Respondents

Mr. Narayan Datt, learned counsel for the petitioner.
Mr. Subhash Upadhyaya, learned Brief Holder for the State.

Hon. Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought mandamus commanding the respondents to make payment salary for the period from March 1993 to December 5, 1977 with interest to the petitioner.

2) Brief facts of the case, as narrated in the writ petition, are that Anushuchit Jati Primary Schools Gweera and Chami in District Pithoragarh are recognized Institutions run by the department of Social Welfare of the State Government. The petitioner was initially appointed as Assistant Teacher in Anushuchit Jati Primary School (for short hereinafter the Primary School) at Gweera by the respondents after he went through the selection process in the year 1985. The petitioner joined his duties on 01.01.1986 in pursuance to the appointment order dated 21.12.1985 (copy Annexure- 1 to the writ petition). after about a year in December 1986, petitioner was transferred from Primary School, Gweera to another Anushuchit Jati

Primary School at Cahmi. Subsequently, on 14.07.1987, the Chairman of Anushuchit Jati Avem Jan Jati Seva Sansthan, Pithoragarh (respondent NO. 7) attached the petitioner from Primary School Chami to Raji Janjati Primary School, Kimkhola (District Pithoragarh). Copy of the said order is annexed as Annexure- 2 to the writ petition. After discharging his duties for some months in Raji Janjati Primary School, Kimkhola petitioner made representation dated 05.05.1988 (copy Annexure- 3 to the writ petition) to respondent No. 6 for relieving him back for Primary School at Chami / Gweera. Since the transfer to Primary School, Kimkhola was not in accordance with the law, the petitioner had to make representation against his transfer to Primary School, Kimkhola. When the petitioner was still working, in March 1993 Government withdrew budgetary / financial support to Raji Janjati Primary School, Kimkhola, District Pithoragarh and the petitioner was neither relieved from said School nor got his salary. On this petitioner contacted the higher authorities on which Assistant Director, Social Welfare Department (respondent No. 2) vide his letter dated 07.09.1994 (copy Annexure- 4 to the writ petition) addressed to respondent No. 6 asked him to consider the case of the petitioner for his transfer. Again, the Additional Director, Social Welfare Department (respondent No. 3) vide his letter dated 17.07.1997 (copy Annexure-5 to the writ petition) directed respondent No. 6 to look into the case of the petitioner personally but to no avail. Due to the arbitrary and illegal act on the part of the respondent No. 7, the petitioner had to remain without salary till November 1997 when ultimately he threatened to sit on fast unto death and was transferred back to the Primary School, Gweera vide order dated 06.12.1997 (copy Annexure- 10 to the writ petition). However, petitioner was not paid salary from March 1993 to December 5, 1997 even after making several requests to the respondents. Hence, the writ petition.

3) A counter affidavit has been filed on behalf of the respondent Nos. 4, 5 and 6 in which it has not been denied if the petitioner was not appointed as Assistant Teac her in Primary School at Gweera or transferred to Chami. However, entitlement of salary for the period March 1993 to December 5, 1997 as claimed by the petitioner has been denied. It is stated in the counter affidavit that by Government Order No. 145/28-9-93-46 (19) -89 dated 25.02.1993, ten posts of teachers and eight posts of Class- IV employees were abolished as such the respondents are not liable to make payment of the salary. However, in the rejoinder affidavit the petitioner has stated that for no fault on his apart he cannot be deprived of his salary. It is further stated in the rejoinder affidavit that during inspection on 11.06.1998 the Assistant District Social Welfare Officer after inspection found that the petitioner has served the department from 01.01.1986 to 11.06.1998 (copy Annexure R.A. 1 to the rejoinder affidavit).

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is, whether the petitioner ahs wrongly been denied salary for the period from March 1993 to December 5, 1997?

6) Copy of the appointment letter dated 21.12.1985 (copy Annexure- 1 to the writ petition) issued by the Chairman of Seemant Unushuchit Jati Avem Jan Jati Seva Sansthan, Pithoragarh shows that the petitioner was appointed as Assistant Teacher in Primary school in Gweera. Another order dated 14.07.1987 issued by the same authority establishes the fact that the petitioner was attached to Raji Janjati Primary School, Kimkhola, District Pithoragarh. This fact is not disputed by the respondents that the primary schools at Gweera

and Chami were funded by the Government through its Social Welfare Department. It is also clear from the letter dated 07.09.1994 (copy Annexure- 4 to the writ petition) issued by the Assistant Director, Social Welfare Department, State of Uttar Pradesh, and the letter dated 17.07.1997 (copy Annexure-5 to the writ petition) issued by the Additional Director, Social Welfare Department, State of Uttar Pradesh that the above mentioned Institutions were run by the Social Welfare Department. From the representations made by the petitioner, which are annexed with the writ petition, it is also clear that against his wishes he was attached to Raji Janjati Primary School, Kimkhola, District Pithoragarh. Admittedly, Social Welfare Department stopped giving grants / finances for running said Institution w.e.f. March 1993. As such, it was the duty on part of the respondents to transfer the petitioner back to the Primary school Gweera or Chami or any other Primary School run by the concerned department. It was not in the hands of the petitioner himself to go and join any Primary School he likes. The petitioner had to suffer from March 1993 till 5th of December, 1997 when he was transferred back to Gweera on account of inaction on the part of the authorities working under the department of Social Welfare of the State Government. Learned Standing Counsel on behalf of the respondents argued that the respondents are not liable to make payment of salary for the period of service rendered in a School which was not run by the Social Welfare Department but the question is who has made the petitioner to serve there till 05.12.1997. Definitely, it is the respondent authorities who compelled the petitioner to work there. Learned Standing Counsel made attempts to convince this Court that the petitioner was not in the service of the Social Welfare Department after March 1993 till November 1997, as such the respondents cannot be held responsible to make the payment of salary of said period. I am unable to agree with the submission

made by the learned Standing Counsel for the reason that neither the services of the petitioner were terminated, rather he was infact remained attached at Primary School, Kimkhola, which means he was not posted at Primary School, Kimkhola but made to work there. Had it not been the case, the respondents would not have transferred him to Gweera in December 1997. Therefore, this Court is of the opinion that the petitioner has wrongly been deprived of his salary by the respondents for the period from March 1993 to December 5, 1997.

7) In the circumstances and in view of the above discussion, the writ petition deserves to be allowed. Accordingly, the writ petition is allowed. The respondents are directed to make payment of salary to the petitioner for the period from March 1993 to December 5, 1997. No order as to costs and interest.

(Prafulla C. Pant, J.)

Dt.: October 29, 2004
H. Negi